LPA No.41 of 2007

6.9. 2007 Present : Mr.Sandeep Sharma, Asstt.Solicitor General of India, for the appellants.
Mr.Ajay Sharma, counsel for the respondent.

CMP(M) No.188 of 2007:

For the reasons stated in the application the delay in filing the appeal is condoned. Application is disposed of.

LPA No.41 of 2007:

This appeal is directed against the judgment delivered by the learned Single Judge of this Court in CWP No.981 of 2001 quashing the order declaring the petitioner to be a deserter and directing the respondents to consider the case of the petitioner for grant of family pension.

The undisputed facts are that the petitioner was enrolled in the Indian Army on 5.1.1977. He was remustered as a Religious Teacher (Pandit) on 1st September, 1984and posted to 13 Punjab (Jind) regiment. The petitioner proceeded on 60 days annual leave w.e.f. 13th March, 1995 to 11th May, 1995. This leave was extended upto 21st May, 1995.

The case of the appellants is that the petitioner did not report back for duty on 21st May, 1995. Apprehension Roll was issued in respect of the petitioner vide letter dated 25th May, 1995 issued to the Deputy Commissioner, Hamirpur as well as the Superintendent of Police, Hamirpur to find out the whereabouts of the petitioner. Since he was not found and remained absent he was first declared to be illegally and willfully absent by the Court of Inquiry w.e.f. 22nd May, 1995. Thereafter, on the expiry of 3 years from the date of

overstay of leave he was dismissed from service on 20th October, 1998 as per policy and in terms of Section 20(3) of the Army Act.

It would be pertinent to mention that Smt.Aprajita, wife of the petitioner had earlier approached this Court by filing CWP No.369 of 1999 in which she had prayed that her husband had not deserted the Army and a proper inquiry be conducted to find out his whereabouts. This petition was finally withdrawn by her. Later, according to Smt.Aprajita Kumari who has filed this petition on behalf of the petitioner, the petitioner was found by some villagers in a temple at Mohali. He was found to be mentally infirm and upset. She informed the Army authorities about this fact on 14th February, 2000. She also prayed that her husband may be granted pension and a lenient disciplinary action be taken since he was mentally upset and remain away from home. The case of the wife clearly is that the husband had not stayed at home for this period of about 4 years and after living his home for rejoining duties he had never returned home.

The wife of the petitioner thereafter sent another letter to the Army authorities on 9th May, 2000. This letter was replied on 12th May, 2000 and it was informed that since her husband was dismissed from service on the basis of the Court of Inquiry no action could be taken.

To support his case, the petitioner has also filed a copy of certificate issued by Dr.S.L.Singla (Private Doctor) dated 2.1.2001 to show that the petitioner was suffering from mental depression and has also placed on record a certificate of the District Health Officer,

Hamirpur dated 24th March, 2001 in which he has certified that the petitioner is suffering from Psychiatric disorder.

We are not at all impressed by the plea of the appellant that once the petitioner had been declared a deserter no action could be taken. The fact remains that immediately after the petitioner was found by his wife, letters were issued to the employers to reconsider his case. In our considered opinion it was a duty cast upon the employer especially in a case where the wife was pleading that her husband was suffering from Psychiatric disorder to ensure that he is mentally checked up to verify the claim of the wife of the petitioner. This the appellants failed to do on the ground that since the petitioner stood already dismissed from service there is no cause to have him medically checked up. In our view this approach totally negates all the canons and rules of natural justice.

We cannot loose sight of the fact that the petitioner had served the Indian Army for almost 18 years. He absented from duty for more than 3 years. According to his wife he had not come home for these 3 years and in fact was found begging at a temple in Mohali after about 4 ½ years. She immediately approached the Army authorities. This has to be coupled with the fact that she had earlier also filed a writ petition in which she has alleged that her husband was missing and had not deserted the Army. Therefore, in our view a duty was cast upon the Army Authorities to verify this claim once it was made. They could not have shut their eyes on the plight of an employee who had served the Indian Army for 18 years and reject his case only on the ground that once a decision has been taken it cannot be reopened. Therefore, we find no merit in this appeal and

the same is dismissed. We are in agreement with the learned Single Judge that the Army Authorities have failed to prove that the petitioner was a deserter. We accordingly direct that his pension (not family pension as ordered by the learned Single Judge) be released in his favour in accordance with law.

(Deepak Gupta),
Judge

Sept. 6, 2007 **(V.K. Ahuja)**
PV **Judge.**